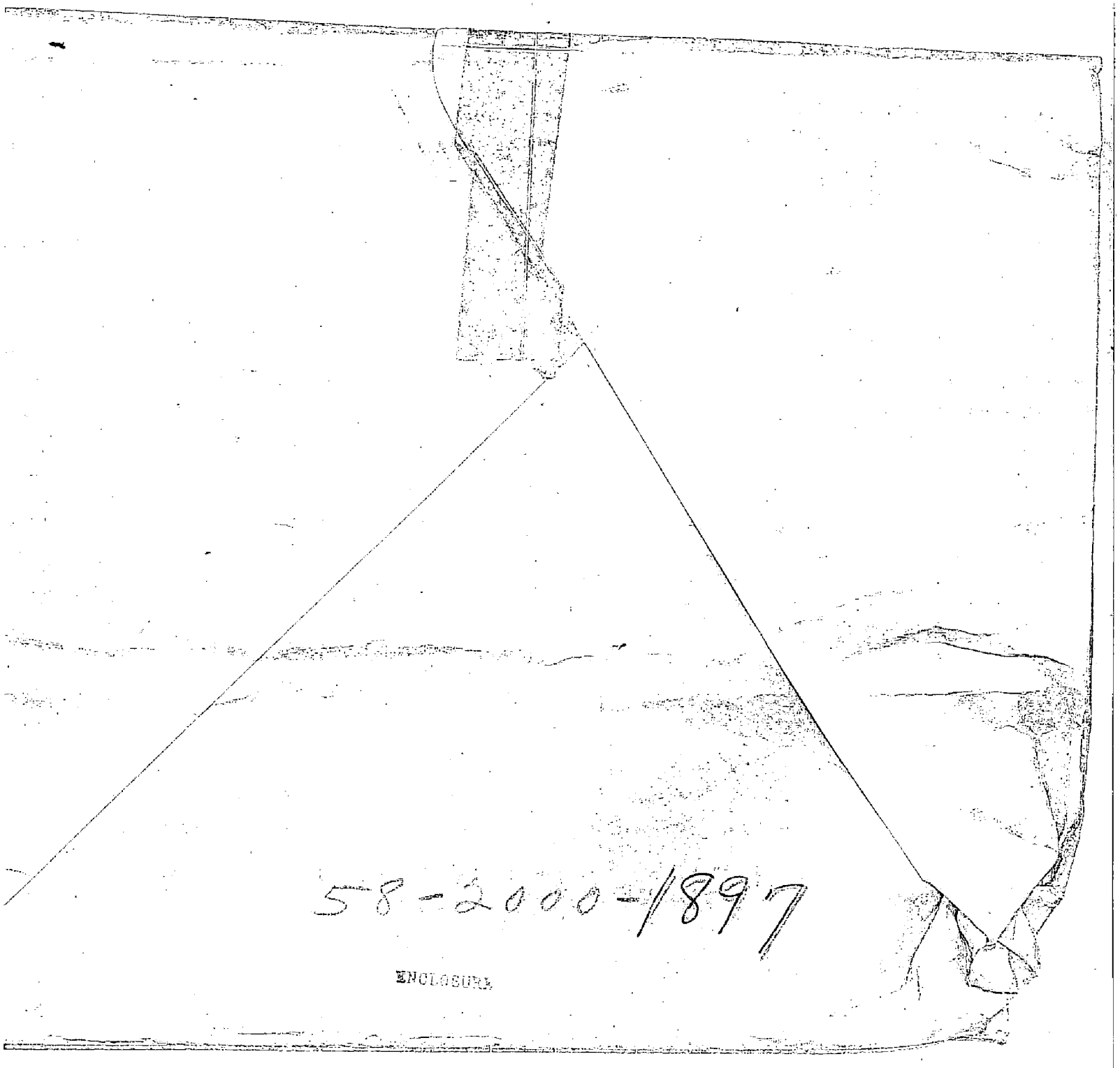

58-2000-1897

ENCLOSURE

No. 2330

United States District Court

NORTHERN DISTRICT OF GEORGIA

Atlanta *Division*

Term, 19

CHARLES GIOE

vs.

W.H.HIATT, WARDEN
U.S.PENITENTIARY
ATLANTA,GEORGIA.

PETITION FOR WRIT OF
HEBEAS CORPUS AND TO
SHOW CAUSE THERE ON

Filed in Clerk's Office

2nd *day of* Sept., *19* 48

F.L.BEERS, *Clerk.*

By Clanton G.Anchors.
Deputy Clerk.

FPI Atl. Ga.—11-16-89—5000

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PETITION TO UNITED STATES JUDGE

To the Honorable E. Marvin Underwood, Judge of the District Court of the United States for the Northern District of Georgia:

1. Your petitioner, CHARLES GIOE, respectfully represents that he is being restrained illegally by virtue of a certain judgment entered by the United States District Court, Southern District of New York, and is illegally restrained of his liberty by being confined in the United States Penitentiary, Atlanta, in said District.

2. The person restraining the liberty of petitioner is W. H. Hiatt, Warden of said Penitentiary, who resides at said Penitentiary, in said District.

3. The cause or pretense of said restraint is by virtue of a mittimus in due form based upon the New York judgment herein described, coupled with a parole warrant also described herein.

4. The attorneys for your petitioner are M. Neil Andrews, 404 - 22 Marietta Street Building, Atlanta, Georgia, and William Scott Stewart, 77 West Washington Street, Chicago, Illinois.

5. Your petitioner has been arrested and committed by virtue of an order signed by a member of the Parole Board and designated as a warrant. The form of warrant is shown by the copy hereto attached. The warrant recites that your petitioner was sentenced by the United States District Court

since the commencement of the investigation, they have examined the file carefully and have reviewed the case and have found no ground upon which this parole might be legally revoked.

11. Your petitioner submits herewith and makes a part hereof the printed report of the Congressional Committee, being House Report No. 2441, 80th Congress, 2d Session, from which your petitioner quotes (p. 1):

> "To date, while the hearings have disclosed the use of considerable money and the employment of individuals in a position to exert influence with those in authority, the committee has been unable to discover any violation of Federal law."

12. The only money disclosed by the testimony produced in the Congressional hearing was that paid in settlement of income tax claims made by the government, the payment of fines and the payment of attorneys' fees. The services rendered by the attorneys are shown to have been necessary, proper and lawful. It has been said in these proceedings that some of the attorneys' fees were excessive, but your petitioner was never given an opportunity to prove the circumstances surrounding upon which an opinion as to their value might be based. Your petitioner paid his fine, no one pleaded poverty. No claim was made against your petitioner for income tax based upon the money said to have been obtained from the movie industry. Your petitioner has no knowledge of the income tax cases involving other defendants in the New York case.

13. Your Petitioner states the fact to be that he has done nothing wrong and has violated no law, rule or regulation in securing parole, and as far as petitioner has been able to learn, no one connected with the granting of parole has violated any law, rule or regulation. Your petitioner states that no evidence has been produced before the Congressmen, or found anywhere to show that any law, rule or custom was violated, or that there was anything improper in the granting of parole in this case.

The Parole Board has set September 8, 1948 as a tentative date for a hearing in prison and on this September 2, 1948 for the first time has notified your petitioner of the nature of the charges to be made as a basis for revocation as follows:

1. Change of employment without permission.

Your petitioner states that there is no truth to this charge as is well known to the Parole Board members and the Board is in possession of no evidence to substantiate this charge for the simple reason that no such evidence exists. Your petitioner did not change his employment and complied with all rules and regulations by reporting truthfully as to every detail of his employment.

2. Failure to truthfully disclose associates on flight from Kansas City to Chicago following release from Leavenworth.

Your petitioner makes the same allegations made by Louis Compagna in his petition herewith.

3. Association with persons of bad reputation.

Your petitioner states that there is no truth to this charge as is well known to the members of the Parole Board.

4. Failure to conduct himself honorably.

Your petitioner makes the same allegations made by Louis Compagna in his petition herewith.

5. Failure to give a proper accounting of income and expenditures.

There is no truth to this charge as is well known to the members of the Parole Board. Your petitioner made out his reports in the manner he was instructed and then after they were filed your petitioner rewrote them to comply with a change made in the requirements of his parole officer. There was nothing improper in this regard as is well known by the members of the Parole Board and the members are in possession of no evidence to substantiate this charge for the simple reason that none exists.

to serve ten years for the crime of violation of Anti-Racketeering Act, Title 18, Section 420A, U. S. Code and was on the thirteenth day of August, 1947, released on parole from the United States Penitentiary, Leavenworth, Kansas.

6. The warrant recites further that whereas, reliable information has been presented to the undersigned member of this Board that said paroled prisoner named in this warrant has violated the conditions of his parole, and the said paroled prisoner is hereby declared to be a fugitive from justice. And commands that any federal officer authorized to serve criminal process execute same by taking your petitioner to the penitentiary.

7. Your petitioner states that he is person suffering legal wrong because of the agency action herein described within the meaning of the relevant statutes and this petition is filed in order to secure judicial review, and the relief prayed, by virtue of the provisions of the Administrative Procedure Act.

8. Your petitioner submits herewith and makes a part hereof a certain Congressional Report and a record of certain Congressional hearings which form some of the foundation and proof of the allegations made in this petition.

9. The United States Board of Parole has been created and exists by virtue of certain statutes as an Agency of the United States government and is a branch of the Department of Justice under the general supervision of the Attorney General.

10. Your petitioner alleges that the parole was issued in good faith in the regular course of the business of the United States Board of Parole, acting pursuant to the authority to it granted by the Statutes, and in accordance to its usual practice. There is no basis in the facts or the law for revocation. Members of the Parole Board have testified that

Your petitioner has read the petition of Louis Compagna filed herewith and hereby incorporates the same and adopts said petition in order to make such claims as are applicable to the case of your petitioner.

Your petitioner states that the warrant under which your petitioner is confined is void having been issued arbitrarily without cause and that the New York judgment is void for lack of jurisdiction and because same is based upon perjury known to be such at the time of its use as more fully described in the petition made by Louis Compagna herewith.

WHEREFORE, petitioner avers that his further restraint is illegal and prays Your Honor to issue a Writ of Habeas Corpus directed to said W. H. Hiatt, Warden, requiring him to bring your petitioner before Your Honor at the time and place to be specified in the Writ for the purpose of examination into the legality of the restraint.

William Scott Stewart
Chicago, Illinois

M. Neil Andrews
Atlanta, Georgia

Attorneys for Petitioner

GEORGIA

FULTON COUNTY

CHARLES GIOE, being first duly sworn, states that the above petition signed by him is true.

Subscribed and sworn to before
me this ____ day of September, 1948

Notary Public, Fulton County, State of Ga.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CHARLES GIOE, Petitioner, vs. W. H. HIATT, Warden, United States Penitentiary, Atlanta, Georgia. Respondent.	)	NO. 2330 HABEAS CORPUS

O R D E R

The foregoing petition considered.

IT IS ORDERED by the Court that the respondent show cause, if any he has, before this Court at Atlanta, Georgia, on the 20th day of September, 1948, at 10:00 A.M., why the said petition for writ of habeas corpus should not be granted.

At Atlanta, Georgia, this the 2nd day of September, 1948.

/s/ E.Marvin Underwood
United States District Judge

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF GEORGIA

Service of foregoing order acknowledged. Copy received at Atlanta, Georgia.

No. 2329

United States District Court

NORTHERN DISTRICT OF GEORGIA

Atlanta *Division*

Term, 19

LOUIS COMPAGNA

vs.

W. H. Hiatt, Warden
U. S. Penitentiary
Atlanta, Georgia.

Petition for writ of

HABEAS CORPUS AD TO

SHOW CAUSE THEREON

Filed in Clerk's Office

2 *day of* Sept., *19* 48

F. L. BEERS, *Clerk.*

By Clanton G. Anchors *Deputy Clerk.*

FPI Atl. Ga.—11-16-39—5000

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

PETITION TO UNITED STATES JUDGE

To the Honorable E. Marvin Underwood, Judge of the District Court of the United States for the Northern District of Georgia:

1. Your petitioner, LOUIS COMPAGNA, respectfully represents that he is being restrained illegally by virtue of a certain judgment entered by the United States District Court, Southern District of New York, and is illegally restrained of his liberty by being confined in the United States Penitentiary, Atlanta, in said District.

2. The person restraining the liberty of petitioner is W. H. Hiatt, Warden of said Penitentiary, who resides at said Penitentiary, in said District.

3. The cause or pretense of said restraint is by virtue of a mittimus in due form based upon the New York judgment herein described, coupled with a parole warrant also described herein.

4. The attorneys for your petitioner are M. Neil Andrews, 404 - 22 Marietta Street Building, Atlanta, Georgia, and William Scott Stewart, 77 West Washington Street, Chicago, Illinois.

5. Your petitioner has been arrested and committed by virtue of an order signed by a member of the Parole Board and designated as a warrant. The form of warrant is shown by the copy hereto attached. The warrant recites that your petitioner was sentenced by the United States District Court

to serve ten years for the crime of violation of Anti-Racketeering Act, Title 18, Section 420A, U. S. Code and was on the thirteenth day of August, 1947, released on parole from the United States Penitentiary, Leavenworth, Kansas.

6. The warrant recites further that whereas, reliable information has been presented to the undersigned member of this Board that said paroled prisoner named in this warrant has violated the conditions of his parole, and the said paroled prisoner is hereby declared to be a fugitive from justice. And commands that any federal officer authorized to serve criminal process execute same by taking your petitioner to the penitentiary.

7. Your petitioner states that he is person suffering legal wrong because of the agency action herein described within the meaning of the relevant statutes and this petition is filed in order to secure judicial review, and the relief prayed, by virtue of the provisions of the Administrative Procedure Act.

8. Your petitioner submits herewith and makes a part hereof a certain Congressional Report and a record of certain Congressional hearings which form some of the foundation and proof of the allegations made in this petition.

9. The United States Board of Parole has been created and exists by virtue of certain statutes as an Agency of the United States government and is a branch of the Department of Justice under the general supervision of the Attorney General.

10. Your petitioner alleges that the parole was issued in good faith in the regular course of the business of the United States Board of Parole, acting pursuant to the authority to it granted by the Statutes, and in accordance to its usual practice. There is no basis in the facts or the law for revocation. Members of the Parole Board have testified

that since the commencement of the investigation, they have examined the file carefully and have reviewed the case and have found no ground upon which this parole might be legally revoked.

11. Your petitioner submits herewith and makes a part hereof the printed report of the Congressional Committee, being House Report No. 2441, 80th Congress, 2d Session, from which your petitioner quotes (p. 1):

> "To date, while the hearings have disclosed the use of considerable money and the employment of individuals in a position to exert influence with those in authority, the committee has been unable to discover any violation of Federal law."

12. The only money disclosed by the testimony produced in the Congressional hearing was that paid in settlement of income tax claims made by the government, the payment of fines and the payment of attorneys' fees. The services rendered by the attorneys are shown to have been necessary, proper and lawful. It has been said in these proceedings that some of the attorneys' fees were excessive, but your petitioner was never given an opportunity to prove the circumstances surrounding upon which an opinion as to their value might be based. Your petitioner paid his fine, no one pleaded poverty. Your petitioner paid his income taxes and settled tax claims, long before application for parole.

13. Your petitioner states the fact to be that he has done nothing wrong and has violated no law, rule or regulation in securing parole, and as far as petitioner has been able to learn, no one connected with the granting of parole has violated any law, rule or regulation. Your petitioner states that no evidence has been produced before the Congressmen, or found anywhere to show that any law, rule or custom was violated, or that there was anything improper in the granting of parole in this case.

14. To quote further from the report (p. 2):

> "The hearings do indicate that the granting of the paroles was improvident, in part due to negligence, and should long ago have been revoked. At the last hearing held in Washington on June 7, 1948, the members of the United States Parole Board, one recently appointed, assured the committee that definite action on the committee's request that the paroles be revoked would be taken, not later than the 19th day of June 1948."

15. There are no facts disclosed at the hearings to indicate that the granting of the parole was due to negligence. Whether the parole was improvidently granted is a mere expression of opinion by the Congressmen. From the views of one of the members of the Committee, printed as a part of the Congressional Report (p. 18), it will be observed that this matter has been agitated by a newspaper which sought to use the Committee to serve its own private political hatreds and ambitions, through baseless attacks on various public officials (p. 23). Subsequent developments indicated that much of this publicity was gossip or rumor, containing little or no foundation in fact (p. 18). That many misstatements of facts and editorials were printed, suggesting that improper political influence was exercised in the granting of the parole. This continued attack is purely political, to smear the party in power, says the Congressional report (p. 21). The opinion expressed by certain Republican Congressmen was intended to reflect upon the Administration of the law in the hands of the Democratic party.

16. The report of the Congressmen assumes the presence of influence, without evidence, and in the face of emphatic denial by the Parole Board members. The Minority Report to Congress finds (p. 23):

> "In summary, the evidence before the committee has failed to produce the slightest indication that the Board of Parole was influenced by any improper motive in granting the paroles under consideration. The Department of Justice and the FBI have worked diligently on the case, and one of the parolees has already been arrested with likelihood that his parole will be revoked."

17. The transcript of the Congressional hearings, also submitted herewith and made a part hereof, will demonstrate a deliberate smear campaign carried on by certain Congressmen, calculated to discredit the President of the United States, the Attorney General, members of the Parole Board, and other Public Officials for political purposes.

18. By reason of the power of the Congressional Committee considerable pressure has been brought to bear upon the members of the Parole Board to end this parole. A study of the transcript will show a change of attitude in the end on the part of the Parole Board members from that taken at the commencement of the Congressional hearings. No new facts were presented by the Congressmen, the law and the statute remained constant. The Committee finds in its report to Congress that the paroles should be revoked. Over a period of months, from January to September, 1948, some of the Congressmen have been demanding revocation.

19. In its report the Committee calls attention to a refusal on part of the Parole Board to act and asks (p. 17):

> "Can it be that the same influences which caused the paroles to be granted in the first instance are still operating?"

20. So it appears that the Congressional Committee compelled the Parole Board to either revoke, or be accused of corruption. Your petitioner has been caught in the middle of a political quarrel, or a contest between powerful forces.

21. Charges of misconduct were made by some of the Congressmen against the Parole Board, without any basis in the evidence, and in contradiction of the sworn testimony produced before them. The Congressional report states that (p. 15):

> "Either because of a lack of inclination or insufficient time, the hearings held by the members of the Parole Board, after application for paroles had been made to it, were neither thorough nor complete, merely perfunctory."

22. This statement in the Congressional report is opposed to the uncontradicted testimony of the Board members. Many material matters heard and considered by the Board are omitted from the report. The former head of the Parole Board has died since the parole was granted and another has resigned. Replacements were made during the Congressional hearing. The warrant herein question is the result of the smear campaign and was issued arbitrarily and capriciously, without any justification in law or fact. The warrant was issued merely to satisfy, if possible, the demands of certain Congressmen, made under threat of such action with their power, in the event that the parole was not terminated. Some of these demands and threats are shown in the record of the Congressional hearings (p. 459). When Daniel M. Lyons testified that he had reviewed the case and had examined the file carefully and saw no legal basis for revocation, one of the Congressmen expressed his personal view that Mr. Lyons should be impeached (p. 85). Mr. Lyons testified on September 25, 1947(p.51):

> "The man has been liberated by proper process, and I have no right to deprive him of his liberty without an equally proper process, and no such process is available to me now."

23. The report states that (p. 31):

> "This Committee has the right to believe that, on the basis of evidence adduced by us, the paroles should be revoked and the four men returned to prison."

24. The transcript demonstrates that the hearings were used by some of the Congressmen to make unfounded accusations and insinuations. Witnesses, including officials, were abused and interrupted. The testimony was twisted and its effect misrepresented. Witnesses were made to appear to say

one thing, when in fact another impression was intended. The hearings were ex parte. No one but the Congressmen were permitted to question witnesses. As appears from the transcript (p. 992) Daniel Lyons requested the privilege of examining witnesses which was denied. Mr. Lyons, who was Chairman of the Parole Board, wrote the Congressmen (p. 995):

> "I am unwilling to select the Subcommittee as my agent for the presentation of evidence or the obtaining of information."

Mr. Lyons has since resigned from the Parole Board.

25. A comparison of the printed Congressional report and the transcript will demonstrate the unfairness of the report in many particulars. Certain information is set out in the report followed by this statement (p. 17):

> "All of this information was either known, or should have been known to the Board before the paroles were granted, had the Board exercised reasonable diligence."

No material fact was developed by the Congressional hearing which was not known and considered by the Parole Board. The explanations given by the members of the Parole Board and further facts necessary to understand the entire picture have been omitted from the report. The transcript shows that each circumstance, deemed to reflect upon the Board, was put to the members of the Board and fully explained by the members. The suspicions of the Congressmen were shown to be unfounded. Facts, recited by the Congressmen, were shown to be not controlling, or were of no consequence in connection with other facts. The Congressmen repeatedly questioned the wisdom of the action of the Parole Board, but it was explained to them that matters of judgment were by law left to the Board. Nothing was shown to bring about any legal method by which that judgment could be overruled or reversed. (See testimony of Daniel Lyons, p. 29, and other members.)

26. The unfairness of the manner in which the Congressional Committee hearings were conducted is such that the record there made cannot be regarded as reliable information. Judge Rogers, who signed the warrant was put upon notice, by reason of his attendance and his examination of the transcript, that the results so obtained should be weighed with caution and viewed with suspicion. Due process is denied, as soon as it is made to appear that reliable has been placed upon the Congressional transcript and record. The warrant is based solely upon the unreliable information contained in the Congressional transcript.

27. As is shown by the transcript of the Congressional hearings the investigation developed no facts upon which a revocation could be predicated.

28. Members of the Board, including Judge Rogers, testified that no fact had come to their attention after careful study and investigation to cause them to believe that any ground existed to warrant revocation in the matter of securing parole. Judge Rogers stated that he believed that the parolee had a vested interest in his liberty on parole (p. 1170) and that unless some subsequent violation took place the parole could not be legally revoked.

29. Mr. Daniel Lyons testified (p. 45) that the parolees were entitled to their liberty as a matter of law.

30/ Since the arrest of your petitioner, George G. Killinger, Chairman of the Board, has written your petitioner's attorney in response to an inquiry, that we have the assurance of the Board that there will be no effort made to revoke the parole on any ground existing at the time the parole was granted.

31. It is evident, from the transcript, that the unfavorable action was promised and agreed upon, before the Board, or any member, could find any justification for revocation in law or fact. It appears from the transcript that the Parole

Board regarded the transcript of the Congressional Committee as a complaint and the recital in the warrant that it has been issued upon reliable information refers to the transcript. In other words, Judge Rogers was forced to regard the Congressional transcript as a complaint, containing information which he has certified as reliable.

32. Your petitioner states that the information to be found in the Congressional transcript does not comply with the statutory requirement as basis for a warrant. There is not one line of testimony to indicate a violation subsequent to parole. In fact all of the parole authorities who testified indicated that your petitioner had kept the conditions of parole and had in every way complied with the law and the rules. The Congressmen stated that your petitioner had been careful to abide by the parole agreement. Judge Rogers stated that your petitioner was a good parole risk, and indicated in his testimony given on June 7, 1948, that your petitioner had proved to be a good risk and your petitioner had not violated. Nothing has happened since June 7, 1948, when Judge Rogers made that statement, that your petitioner has not violated, to properly form a basis for the warrant.

33. Before the warrants were issued, your petitioners requested a hearing of the question as to whether any such action should be taken. This right was denied by the Board.

34. Your petitioner has requested a hearing which will include the right to counsel, the right to produce witnesses and other rights deemed requisite. This has been refused. The Board has replied in effect -- that a secret hearing will be held within the walls of the penitentiary from which hearing every one but the prisoner will be excluded. This is in accordance with the rules and present custom and practice of the Board.

35. Your petitioner has carefully studied all of the papers given to him by the parole authorities concerning the matter of the conduct expected. Also, your petitioner has from time to time inquired of the parole authorities as to the rules he must follow and he has received advice from time to time concerning specific problems, before taking any action, in an effort to strictly comply with every rule. Your petitioner states that he has faithfully complied with all conditions of his parole and all rules known to him and has not violated his parole in its spirit or in its letter.

36. Upon the hearing, your petitioner requests and seeks a full investigation of the causes for the issuance of said warrant and represents that a hearing will disclose that there has been no violation and that the warrant was issued arbitrarily without just cause.

37. There is filed and submitted herewith and made a part hereof a certified copy of the record of the trial in New York. It was claimed upon the trial that the conviction was founded upon perjury, but now in the light of subsequent events your petitioner is in a position to prove and state the fact to be that the perjury was known to be such by the prosecuting officials at the time of its use in the trial. The perjury was about material matters and without the perjury, known to be such, the government had no cause against your petitioner. A certified copy of the judgments against Bioff and Browne are submitted herewith and made a part hereof. It will be observed that after the original conviction and after the trial, on December 22, 1944, the sentences against Bioff and Browne were reduced to relieve them immediately of imprisonment. Bioff and Browne protested when they were put in jail after testifying, and said that if they were not released they would tell of

the deal they had made with the prosecutors. They threatened to tell how they were promised their freedom in exchange for their testimony. They threatened to tell of the manner in which the case against your petitioner had been arranged and fabricated with the assistance of the prosecutors. Upon the trial they said that there had been no promises, which was false and known to be false by them and by the prosecutors. Their testimony connecting your petitioner with crimes committed by them was false and known to be false by them and by the prosecutors.

38. In the matter of the Estate of Frank Nitto in the Tax Court as appears from the transcript submitted herewith, the government took the testimony of witnesses including those who testified as victims at the New York trial.

39. Among the witnesses who testified both in the tax case and as to petitioner are the following: Austin C. Keough, Samuel Carlisle, Albert Warner, George Mergenroth, John A. Flaherty, and Hugh J. Strong.

40. That version given at the request of the Government officials in the New York trial was false, was known to be false by the witnesses and the Government officials. This perjured testimony was material and without it no case could have been made out against your petitioner.

41. The charge in the indictment that the conspiracy was formed in New York was false when it was made at the trial and when made before the grand jury and was known to be false when used by the prosecutors. The New York court did not have jurisdiction and its judgment is void.

42. Your petitioner was sentenced to serve ten years in the penitentiary and to pay a fine. The fine has been paid. The judgment was affirmed by the Circuit Court of Appeals, United States v. Compagna, 146 F. 2d 524 and certiorari denied

by the Supreme Court, 314 U.S. 687 rehearing denied 314 U.S. 714, 316 U.S. 710. Your petitioner was denied bail upon appeal and elected to commence sentence. After your petitioner served one-third of the sentence, parole was granted.

43. Although the point was properly preserved and the question was duly submitted on appeal, the Circuit Court refused to pass upon the matter of venue. The point was disposed of as if it were a complaint as to the technical sufficiency of the indictment.

44. The facts and circumstances by which your petitioner is able to prove the knowing use of perjury at his trial was not known to petitioner until after the appeal was terminated.

45. As is shown by the record submitted herewith the indictment consists of one count and charges that your petitioner conspired with other defendants, Bioff, Browne, Circella and persons unknown, to violate the statute known as the Anti-Racketeering Act, Section 420, 18 U.S.C.A.

46. The conspiracy is alleged to have been a continuing one from 1934 (the date of the passage of the Act), to the return of the indictment in 1943. The indictment charges, in the language of the Act, that in connection with and relation to acts affecting foreign and interstate trade and commerce, the defendants conspired to obtain, by the use of and threat to use, force, violence and coercion, the payment of over a million dollars, from a group of corporations, referred to as the victims, including, Loews, Paramount, Twentieth Century Fox and Warner Brothers. It is alleged that Browne, Bioff, Circella and Kaufman were connected with a labor union, i.e., the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, called the IATSE. That the victims were engaged in

interstate commerce in the production, distribution and exhibition of motion pictures, that the defendants would dominate, control and direct the IATSE, that the million dollars would be obtained by wrongful use of force and fear by demanding that the victims pay for protection, viz, to prevent and dissuade the defendants from restraining, impeding and obstructing, interstate distribution and exhibition of motion pictures throughout the United States and otherwise injuring and destroying the business of the victims.

47. The evidence may be summarized as follows: George Browne, (R. 1014), was International President of a labor union affiliated with the American Federation of Labor. In the various local unions, members worked at the operation of moving picture machines and, in Hollywood, various craftsmen, members of the union, were engaged in the production of moving picture films. Before Browne was elected in 1934, the former International President had lost a strike in Hollywood. The loss of this strike is explained by the fact that other unions failed to cooperate. Instead of forcing their demands upon the employers, the strike failed and resulted in a loss of membership to the IATSE. The then president lost prestige and Browne was elected without opposition.

48. It appears that during all of the time in question, the employers and employees in Hollywood have been working under what is known as a basic agreement. The representatives of Employers and Labor met annually and formed an agreement. Wages and working conditions were settled for the period. When the IATSE lost their prestige and power, they were not included in the basic agreement with the other unions. After Browne was first elected in 1934, he appointed Bioff as his personal representative and Bioff and Browne proceeded to restore the power of the IATSE in Hollywood by the following method.

49. The producers in Hollywood are so closely connected with the exhibitors that neither the producers nor the exhibitors could withstand a strike in the Chicago theaters. Bioff and Browne took advantage of this tie up, by exerting pressure upon the exhibition end of the entire structure. They called a strike against the exhibiting chain in Chicago in 1935. This strike lasted only a few hours and was sufficient to cause the executives of the producers to run to Bioff and Browne to find out what they must do in order to stop the strike and avert further labor trouble. Bioff and Browne demanded that the IATSE be restored to power in Hollywood and forced this, and many other advantages, for the International Union. Your petitioner had nothing to do with all of this.

50. Subsequently, Bioff and Browne took advantage of the power of the position they found themselves in after their jurisdiction was restored, and collected large sums of money from those engaged in the production, distribution, and exhibition of moving pictures.

51. Browne and Bioff were prosecuted and convicted of the substantive offense, prohibited by the Anti-Racketeering Act and sentenced to eight years in the penitentiary and to pay a fine of twenty thousand dollars. The fine was paid to avoid a more severe sentence. After their conviction, they appeared in the trial as witnesses for the prosecution. They furnished evidence of circumstances from which the government succeeded in convincing the trial judge and the jury that your petitioner was guilty of the conspiracy charged. It cannot be disputed that Bioff and Browne obtained large sums of money from companies alleged to have been the victims. Your petitioner states that your petitioner had nothing to do with the obtaining of this money nor did your petitioner receive any of it.

52. Your petitioner is not guilty of the charge made and by reason of some of the facts developed by the legislative

committee, including facts which your petitioner was unable to prove prior to the hearings, your petitioner states that the conviction rests upon perjured testimony. The facts and circumstances proved, including some disclosed by the Congressional hearings, are such that the prosecuting authorities have been put upon notice and must know that perjury is the basis of the conviction of your petitioner.

53. Bioff was not corroborated in the essential portions of his testimony by which it was sought to connect your petitioner with his misconduct. Bioff testified that he desired to serve his sentence in full unless he could be released on bond to fight in the army. No such release was possible because of a previous conviction for pandering.

54. The Congressional hearings developed the fact that the trial judge expressed himself as of the opinion that Bioff and Browne were the bell-wethers and consequently that your petitioner should not be required to serve longer sentences than demanded of Bioff. Upon this hearing many circumstances will be shown to prove that Bioff engineered a plot to convict your petitioner in order to free himself. At his trial Bioff claimed that the money he obtained was delivered to Schenck, one of the movie producers. Bioff had been in the home of Schenck, so he merely used his knowledge of the details acquired upon a social visit and transposed these details to a visit he perjured himself about. Bioff admitted this perjury at the trial of your petitioner and then told another set of falsehoods in which he claimed delivery of the same money to the defendants including your petitioner.

55. The prosecution presented circumstantial or indirect evidence and nothing else. The record submitted herewith will show that although Bioff and Browne by inference, claimed that

they conspired with your petitioner, they do not claim to have been present when any agreement was made or plan outlined such as that alleged in the indictment. The existence of the agreement alleged must be inferred, if one existed. The prosecutor did not claim to have direct evidence of any such agreement. Bioff and Browne did not say that they conspired to commit acts affecting interstate commerce. No such agreement or conspiracy as that alleged in the indictment was proved by direct evidence. We claim here that it was never proved at all.

56. Your petitioner had no interest in the union and was not concerned with its object. No one claimed to have any proof to the contrary of this statement. Your petitioner did not belong to the union or any union nor did your petitioner hold any union position. The prosecutors secured conviction of your petitioner by assuming from scattered conversations over a period of years, mainly, with persons dead, that the conspiracy existed. Then it became merely a matter of identifying the conspirators.

57. Your petitioner at the time of the trial and of the acts claimed, was a resident of Illinois. The testimony given at the trial by Bioff shows that he told the same story he testified to in the trial to the Grand Jury and to the prosecuting authorities. The indictment charges that the conspiracy was formed in New York. This allegation was false and known to be false by the prosecuting authorities. The New York court did not have jurisdiction.

58. The prosecuting authorities chose New York because of conditions which made that jurisdiction unfavorable to your petitioner, and very inconvenient. Numerous persons were required to travel from Chicago, give bond to stay in New York and then were not called as witnesses. This and other

tactics were employed to convice the public in New York that your petitioner was part of an organized gang of criminals. In fact the record shows that your petitioner was prosecuted and convicted upon general principles. The proceedings were but a mask, your petitioners were afforded a trial in name only, the jury by reason of the deliberate conduct of the prosecutors was converted into a mob. They were so blinded by prejudice that any dispassionate consideration of the evidence was impossible.

59. The Anti-Racketeering Act excepts from its provisions the action of union officials in carrying out the legitimate objects of labor. Bioff and Browne obtained the money by reason of their union position upon threat of strikes. Your petitioner had no part in the strikes or the demands for money and no one claimed that your petitioner took any such part. So on this ground the New York court had no jurisdiction under the undisputed facts.

60. The conduct of Bioff and Browne as union officials concerned strikes and threatened strikes in local theaters. It had nothing to do with interstate commerce and did not come within the provisions of the Anti-Racketeering Act. Congress has no power to legislate on local matters and the federal court in New York was without jurisdiction for this reason, as was shown by the undisputed evidence at the trial and which your petitioner will demonstrate here.

61. John Rosselli was convicted in the same trial and paroled at the same time. Rosselli resided before and after his parole in Los Angeles, California. He was arrested on a similar warrant issued at the same time as that against your petitioner. He petitioned for habeas corpus in California and the matter is there pending under advisement.

62. When DeLucia, a co-defendant, was arrested, he was taken to the Cook County Jail in Chicago, Illinois, to await transportation to the penitentiary in Leavenworth, Kansas, which had been arranged for the afternoon of the arrest. The petition for habeas corpus was filed and the writ issued within a few hours of his arrest. Some of the Congressmen and some of the newspapers issued statements from day to day to the effect that the Marshal had bungled the matter of arrest, and if it had been handled properly, De Lucia would have been taken from the jurisdiction of his home before any petition could be filed. It was charged that your petitioner's attorney had benefited by a so-called leak and had taken advantage of advance information concerning the arrest. The writ was called a convenient and easy writ of habeas corpus and insinuations were made that there was something illegal or underhanded about the application for relief from the District Court in Chicago. The Congressional Committee called a meeting in Chicago and required the law printer and your petitioner's attorney to explain how it happened that the petition had been prepared in advance. It was explained that the transcript of the hearings of the Congressional Committee contained sufficient notice to suggest that it would be advisable to be prepared. The news of this examination of witnesses before the Congressional Committee was reported in some of the papers as if there were something improper about the application for habeas corpus.

63. So a conspiracy was then formed by various officials, including representatives of the Parole Board, deputy marshals, F.B.I. agents and others to kidnap your petitioner from his home at 5 or 6 o'clock in the morning, and to put him upon a train scheduled to leave for the prison in Atlanta at 7:30 A.M., in order that your petitioner should not have an opportunity to seek relief in the courts of his home Distrct. This conspiracy was

formed and carried out by government agents in violation of rights guaranteed by the Constitution and the statutes, particularly Title 8, Chapter 3, Civil Rights U.S.C.

64. Gioe was arrested in his home about 5:30 A.M., taken on the train at 7:30 A.M., August 19, 1948, and prevented by the agents from making any application to the courts of the Northern District of Illinois, and was prevented from communicating with any one.

65. Compagna did not happen to be at home when the government agents arrived at his home. He surrendered in the District Court in Chicago the same morning when he learned that a warrant had been issued for him. His application was denied the same morning it was presented. The government attorneys stated in opposing the writ on August 19, 1948 and in opposing a stay for the purpose of appeal, that the Board was about to meet in Atlanta and any delay might cause Compagna to miss the hearing. At the time of preparing this motion no hearing has been granted. Compagna was taken to Atlanta on the day of his arrest.

66. The warrant for your petitioner was received by the United States Marshal in Chicago at 10:30 A.M., August 18, 1948. As was well known by the officials, a telephone call would have caused your petitioner to appear in the office of the marshal within the time it would take your petitioner to travel from his home. The officials knew where your petitioner was every day, twenty-four hours a day. Each and every time your petitioner was wanted by any official, a telephone call had resulted in an immediate appearance.

67. A Congressional Committee is investigating Russian spy activities and a woman has given evidence incriminating certain public officials. Some of the Congressmen are reported in the press to have made statements linking

your petitioner with that exposure on the ground that misconduct in public office is concealed from the public by means of secret hearings, and Congress has been denied access to reports by the President. This is all political wind bag stuff, but it is dangerous and harmful. It is calculated to inject the case of your petitioner into the coming political campaign for President. This sort of a situation makes it all the more important that the courts enforce those rights given your petitioner to insure fair treatment.

68. As is shown by the Congressional transcript, the present members of the Parole Board have been acting as investigators and are disqualified as hearing officers under the provisions of the Administrative Procedure Act. Also, it appears that they have been forced by the Congressional Committee to prejudge this case and to express opinions contrary to the rights of your petitioner.

69. Your petitioner states that under the rules of the Parole Board and its established practice, no provisions is made for a hearing of any kind in the matter or issuance of a warrant. These warrants were issued without any hearing, arbitrary without cause or basis and are void. The Agency has provided no method by which the action of a Board Member might be reviewed within the Board or is there any method suggested in the rules or practice of the Board providing for judicial review relative to warrants. The warrant is in fact and effect a commitment. There is a final agency action for which there is no other adequate remedy in any court made reviewable by the Administrative Procedure Act, Section 10.

It is alleged that, and the Court is requested to find that, the action of the Parole Board was:

(1) arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, and immunity;

(3) in excess of statutory jurisdiction, authority, and limitations, and short of statutory right;

(4) without observance of procedure required by law;

(5) unsupported by substantial evidence;

(6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

The agency action has been unreasonably delayed.

All of which is made reviewable by Section 10 (e) of the Administrative Procedure Act.

70. There is no method or procedure provided by the rules or the practice of the Parole Board, known to your petitioner by which a parolee may be granted his liberty under parole supervision or on bail pending determination after a warrant is issued and served. The agency has failed to preserve the status quo.

Your petitioner demands relief as follows:

1. That the Court declare the New York judgment void and that the Parole Board has no power to take any action thereon for lack of jurisdiction.

2. That the Court declare the warrant void as having been issued contrary to law.

3. In the alternative, that the Court grant such interim relief as may be deemed just and proper pending further action by the United States Parole Board. This relief may take the form of a bond to be approved by this court conditioned upon appearance before any hearing conducted by the Board and submission to any and all orders of the Board, or the Board may be ordered to withhold action on the warrant and to permit your petitioner to remain on parole until further order of the Board.

4. That the Parole Board be ordered to return your petitioner to the District of his home in Chicago, Illinois.

5. That the Parole Board be ordered to grant your petitioner a hearing in compliance with the requirements of the Administrative Procedure Act. This hearing to be public and to include the following:

a. That the Parole Board be ordered to conduct the hearing in the District of the home of your petitioner in Chicago, Illinois.

b. The benefit of counsel at all stages of the proceeding, including those preliminary to the hearing.

c. A specification of the charges or outlined of the evidence upon which the warrant was issued and said to be reliable by the member signing the warrant. This to be furnished in advance of the hearing in order to give the parolee an opportunity to prepare.

d. If there is to be any attempt to revoke the parole on the ground that same was improperly granted or upon facts and circumstances existing at the time of the granting of parole, petitioner requests a statement to that effect with a specification of the reasons.

e. Designation in advance of the time and place of the intended hearing in order that petitioners may present their witnesses.

f. The privilege of confronting any witnesses who claims to know of any violation and to hear their testimony and to cross-examine.

g. The opportunity and permission to produce witnesses.

h. Permission to have counsel present at all stages of the hearing and to have the benefit of representation by counsel.

i. Permission to have present at all stages of the hearing a court reporter to be selected and paid by petitioners or that the Board require the presence of a court reporter and furnish petitioner, at their expense, with a transcript.

j. Notification of the action of the Board together with a copy of any findings made or orders entered.

k. A copy of the rules of the Board or such regulations as may be said to govern or bear upon the matter of the hearing.

Your Petitioner states that various petitions have been filed in this matter as follows:

John Rosselli, a co-defendant on parole has applied for a writ of habeas corpus in Los Angeles, California and the matter is now under advisement. A stay order was entered and Rosselli is in custody of the Marshal pending disposition of the case.

Paul De Lucia, a co-defendant on parole, is on bail pending disposition of a writ of habeas corpus in Chicago.

Louis Compagna applied for a writ of habeas corpus in Chicago and same was denied. An appeal is pending.

Paul De Lucia, Louis Compagna, and Charles Gioe applied for relief by way of a petition for judicial review in Chicago. The United States Attorney filed a special appearance and questioned the jurisdiction of the Court over the Parole Board. These petitions were dismissed and an appeal is pending.

The Parole Board has set September 8, 1948 as a tentative date for a hearing in prison and on this September 2, 1948 for the first time has notified your petitioner of the nature of the charges to be made as a basis for revocation as follows:

1. Failure to reveal source of monies used in settlement of internal revenue tax, when questioned before a legally constituted body.

Your petitioner states as a fact that the Board has no evidence to support any such charge for the simple reason that no such evidence exists as is well known by the members of the Board. Your petitioner was asked by the Congressmen who paid the money used in settlement of income tax and your petitioner

truthfully answered that your petitioner did not know. This money was paid while your petitioner was a prisoner in the penitentiary.

2. Failure to conduct himself honorably.

Your petitioner states that this charge is vague and indefinite and can be answered only in like terms. Your petitioner states the fact to be that your petitioner has conducted himself honorably at all times while on parole which fact is well known to all of the members of the Parole Board and the members are in possession of no evidence to support this charge for the simple reason that none exists.

3. Failure to truthfully disclose associates on flight from Kansas City to Chicago following release from Leavenworth.

Your petitioner truthfully answered all questions concerning this trip and as is well known to the members of the Parole Board the parolees traveled by air from the prison to Chicago in the company of each other and did everything required of them by the rules and regulations of the authorities.

The Parole Board members have been in possession of all of the information available concerning this trip since the date of the trip or shortly thereafter and the making of a charge based upon said trip is merely evidence of the desperation of the Parole Board caused by the pressure on the Board to find some legal justification for the warrant.

WHEREFORE, petitioner avers that his further restraint is illegal and prays Your Honor to issue a Writ of Habeas Corpus directed to said W. H. Hiatt, Warden, requiring him to bring your petitioner before Your Honor at the time and place to be specified in the Writ for the purpose of examination into the legality of the restraint.

William Scott Stewart
Chicago, Illinois

M. Neil Andrews
Atlanta, Georgia

Attorneys for Petitioner.

GEORGIA

FULTON COUNTY

LOUIS COMPAGNA, being first duly sworn, states that the above petition signed by him is true.

_____

Subscribed and sworn to before
me this ___ day of September, 1948.

_____
Notary Public, Fulton County, State of Ga.

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

(Seal)

WARRANT

THE UNITED STATES BOARD OF PAROLE

To any Federal Officer Authorized to Serve Criminal Process within the United States:

WHEREAS, was sentenced by the United States District Court for the Southern District of New York to serve a sentence of ten years -months and -days for the crime of violation of Anti-Racketeering Act, Title 18, Section 420A, U. S. Code and was on the thirteenth day of August, 1947, released on parole from the United States Penitentiary, Leavenworth, Kansas.

And whereas, reliable information has been presented to the undersigned member of this Board that said paroled prisoner named in this warrant has violated the conditions of his parole, and the said paroled prisoner is hereby declared to be a fugitive from justice.

Now, therefore, this is to command you to execute this warrant by taking the said wherever found in the United States, and him safely returned to the institution hereinafter designated.

Witness my hand and the seal of this Board this 15th day of June, 1948.

FRED D. ROGERS,

Member U. S. Board of Parole

(Seal)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

LOUIS COMPAGNA Petitioner	)	
vs	)	NO. 2329
W. H. HIATT, Warden, United States Penitentiary, Atlanta, Georgia Respondent	)	HABEAS CORPUS

ORDER

The foregoing petition considered.

IT IS ORDERED by the Court that the respondent show cause, if any he has, before this Court at Atlanta, Georgia, on the 20th day of Sept., 1948 at 10 A.M., why the said petition for writ of habeas corpus should not be granted.

At Atlanta, Georgia, this the 2nd day of September, 1948.

/s/ E.Marvin Underwood
United States District Judge